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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

12 SHONTA CHARI WILLIAMS BARRE,) Case No. EDCV 18-00684-AS
13)
14 Plaintiff,) MEMORANDUM OPINION AND
15) ORDER OF REMAND
16 v.)
17 NANCY A. BERRYHILL, Acting)
18 Commissioner of Social)
Security,)
Defendant.)
_____)

19 PROCEEDINGS
20

21
22 On April 4, 2018, Plaintiff filed a Complaint seeking review of the
23 denial of her applications for Disability Insurance Benefits and
24 Supplemental Security Income. (Docket Entry No. 1). The parties have
25 consented to proceed before the undersigned United States Magistrate
26 Judge. (Docket Entry Nos. 10-11). On September 21, 2018, Defendant
27 filed an Answer along with the Administrative Record ("AR"). (Docket
28 Entry Nos. 17-18). On January 7, 2019, the parties filed a Joint

1 Stipulation ("Joint Stip.") setting forth their respective positions
2 regarding Plaintiff's claims. (Docket Entry No. 21).

3
4 The Court has taken this matter under submission without oral
5 argument. See C.D. Cal. L.R. 7-15.

6
7 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
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9 On May 29, 2014, Plaintiff, formerly employed as a medical biller,
10 a medical collector, and a financial counselor for a hospital (see AR
11 58-69, 303-04), filed an application for Disability Insurance Benefits,
12 alleging an inability to work because of a disabling condition since
13 November 6, 2006. (See AR 225-29). On May 29, 2014, Plaintiff filed an
14 application for Supplemental Security Income, alleging a disability
15 since April 6, 2010. (See AR 230-35). Plaintiff later amended her
16 alleged disability date to May 23, 2014. (See AR 50-51).

17
18 On April 4, 2017, the Administrative Law Judge ("ALJ"), Robert
19 Lenzini, heard testimony from Plaintiff (represented by counsel) and
20 vocational expert Sandra Moore Fioretti. (See AR 50-98). On July 5,
21 2017, the ALJ issued a decision denying Plaintiff's applications. (See
22 AR 28-39). After determining that Plaintiff had severe impairments --
23 "spondylitis of the cervicothoracic spine; degenerative disc disease of
24 the spine; carpal tunnel syndrome; and infraspinatus tendinosis of the
25 right shoulder" (AR 23)¹ -- but did not have an impairment or combination
26 of impairments that met or equaled the severity of one of the listed
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1 The ALJ found that Plaintiff's other impairments --
fibromyalgia, hypertension, migraines, and bilateral foot pain - were
nonsevere. (AR 31).

1 impairments (AR 31-32), the ALJ found that Plaintiff had the residual
2 functional capacity ("RFC")² to perform medium work³ with the following
3 limitations: can push and pull with the left dominant upper extremity
4 frequently; can reach overhead with the bilateral upper extremities
5 frequently; can handle and finger with the bilateral hands frequently;
6 can climb stairs and ramps frequently; can climb ladders, ropes and
7 scaffolds occasionally; and can balance, stoop, kneel, crouch and crawl
8 frequently. (AR 32-38). The ALJ then determined that Plaintiff was able
9 to perform her past relevant work as an insurance clerk, medical record
10 coder and collections clerk as actually performed and as generally
11 performed in the national economy (AR 38) and therefore found that
12 Plaintiff was not disabled within the meaning of the Social Security
13 Act. (AR 39).

14
15 Plaintiff requested that the Appeals Council review the ALJ's
16 decision. (See AR 222, 323-27). The request was denied on February 7,
17 2018. (See AR 1-6). Plaintiff now seeks judicial review of the ALJ's
18 decision, which stands as the final decision of the Commissioner. See
19 42 U.S.C. §§ 405(g), 1383(c).

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26 ² A Residual Functional Capacity is what a claimant can still do
27 despite existing exertional and nonexertional limitations. See 20
28 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

³ "Medium work involves lifting no more than 50 pounds at a time
with frequent lifting or carrying of objects weighing up to 25 pounds."
20 C.F.R. §§ 404.1567(c), 416.967(c).

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STANDARD OF REVIEW

This Court reviews the Administration's decision to determine if it is free of legal error and supported by substantial evidence. See Brewes v. Comm'r, 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more than a mere scintilla, but less than a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether substantial evidence supports a finding, "a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001)(internal quotation omitted). As a result, "[i]f the evidence can support either affirming or reversing the ALJ's conclusion, [a court] may not substitute [its] judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).⁴

PLAINTIFF'S CONTENTIONS

Plaintiff alleges that the ALJ erred in assessing Plaintiff's RFC by failing to properly consider: (1) the relevant medical evidence, including opinion evidence; and (2) Plaintiff's subjective statements and testimony. (See Joint Stip. at 4-10, 19-21).

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⁴ The harmless error rule applies to the review of administrative decisions regarding disability. See McLeod v. Astrue, 640 F.3d 881, 886-88 (9th Cir. 2011); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)(An ALJ's decision will not be reversed for errors that are harmless).

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DISCUSSION

After consideration of the record as a whole, the Court finds that Plaintiff's second claim of error warrants a remand for further consideration. Since the Court is remanding the matter based on a Plaintiff's second claim of error, the Court will not address Plaintiff's first claim of error.

A. The ALJ Did Not Properly Assess Plaintiff's Testimony

Plaintiff asserts that the ALJ did not provide proper reasons for finding that Plaintiff's testimony about her symptoms and limitations was not fully credible. (See Joint Stip. at 19-21). Defendant asserts that the ALJ provided proper reasons for finding Plaintiff not credible. (See Joint Stip. at 21-25).

1. Legal Standard

Where, as here, the ALJ finds that a claimant suffers from a medically determinable physical or mental impairment that could reasonably be expected to produce her alleged symptoms, the ALJ must evaluate "the intensity and persistence of those symptoms to determine the extent to which the symptoms limit an individual's ability to perform work-related activities for an adult" Soc. Sec. Ruling ("SSR") 16-3p, 2017 WL 5180304, *3.⁵

⁵ SSR 16-3p, which superseded SSR 96-7p, is applicable to this case, because SSR 16-3p, which became effective on March 28, 2016, was in effect at the time of the Appeal Council's February 7, 2018 denial of Plaintiff's request for review. 20 C.F.R. § 404.1529, the regulation on (continued...)

1 A claimant initially must produce objective medical evidence
2 establishing a medical impairment reasonably likely to be the cause of
3 the subjective symptoms. Smolen v. Chater, 80 F.3d 1273, 1281 (9th Cir.
4 1996); Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991). Once a
5 claimant produces objective medical evidence of an underlying impairment
6 that could reasonably be expected to produce the pain or other symptoms
7 alleged, and there is no evidence of malingering, the ALJ may reject the
8 claimant's testimony regarding the severity of his or her pain and
9 symptoms only by articulating specific, clear and convincing reasons for
10 doing so. Brown-Hunter v. Colvin, 798 F.3d 749, 755 (9th Cir.
11 2015)(citing Lingenfelter v. Astrue, 504 F.3d 1028, 1036 (9th Cir.
12 2007)); see also Smolen, supra; Reddick v. Chater, 157 F.3d 715, 722
13 (9th Cir. 1998); Light v. Social Sec. Admin., 119 F.3d 789, 792 (9th
14 Cir. 1997). Because the ALJ does not cite to any evidence in the record
15 of malingering, the "clear and convincing" standard stated above
16 applies.

17
18 Generalized, conclusory findings do not suffice. See Moisa v.
19 Barnhart, 367 F.3d 882, 885 (9th Cir. 2004)(the ALJ's credibility
20 findings "must be sufficiently specific to allow a reviewing court to
21 conclude the [ALJ] rejected [the] claimant's testimony on permissible
22 grounds and did not arbitrarily discredit the claimant's testimony")
23 (citation and internal quotation marks omitted); Holohan v. Massanari,
24 246 F.3d 1195, 1208 (9th Cir. 2001)(the ALJ must "specifically identify
25 the testimony [the ALJ] finds not to be credible and must explain what
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28 ⁵ (...continued)
evaluating a claimant's symptoms, including pain, has not changed.

1 evidence undermines the testimony"); Smolen, 80 F.3d at 1284 ("The ALJ
2 must state specifically which symptom testimony is not credible and what
3 facts in the record lead to that conclusion.").

4
5 2. Plaintiff's Testimony

6
7 Plaintiff gave the following testimony at the administrative
8 hearing (see AR 55-90):

9
10 She is 45 years old, weighs 148 pounds, lives in a
11 house, and is recently divorced. She became a licensed
12 vocational nurse (a 2-year degree) and obtained a vocational
13 certificate to work as a medical coder in 2001. From October
14 2016 to December 2016, she worked for United Healthcare
15 Services, but she had to stop (based on her doctor's advice)
16 after being hospitalized for spasms and pain in her hands
17 and back caused by her fibromyalgia. For a short time in
18 2016, she worked on a self-employed basis (through a
19 temporary agency) for a doctor but had to stop working
20 because she caould not afford the necessary medical
21 equipment. In October 2016, she settled a California
22 Worker's Compensation claim (which she had filed based on
23 swelling in her hands). From June 2014 to June 2015, she
24 received State Disability Benefits. For almost 2 years,
25 until May 23, 2014, she worked as a medical biller for
26 Hospital Business Services, where she submitted claims by
27 typing and entering codes on forms, obtained medical records
28 from doctors, and verified insurance eligibility and benefits
for patients. Part of that job involved lifting/pushing
bills (40 to 50 pounds) two times a day and lifting reams of
paper (25 pounds) throughout the day. From 2011 until
2013, she worked as a medical biller for Vibra Hospital,
doing the same things she did for Hospital Business Services.
In 2010 she worked as a medical biller/collector for
Consolidated Healthcare, doing the same things she did for
Hospital Business Services and Vibra Hospital. Prior to
then, she worked as a medical biller/financial counselor at
Loma Linda Hospital, doing the same things but also
registering patients and posting payments. In 2007, she
worked for two temporary staffing agencies and did billing
jobs. In 2004, she worked as a referral coordinator for BBI
Holding, where she sought authorizations from insurance
companies to obtain medical equipment for patients and
entered payments into the system. She also worked as a
referral coordinator for GDI Medical, seeking authorizations
from insurance companies. In her medical biller and referral
coordinator positions, she had to load reams of paper into

1 the printer throughout the day and remove stacks of paper
2 from the printer throughout the day. (See AR 55-71, 76-79).

3 She is not able to work primarily because she cannot sit
4 for very long (she can sit for approximately 30 minutes
5 before feeling stabbing pain) and because of nerve damage in
6 her hands (she cannot type or grasp a mouse). When she sits,
7 her lumbar spine swells up. She experienced pain sitting at
8 the hearing. In May 2016, as part of her Worker's
9 Compensation case, she saw Dr. Aval, an agreed medical
10 examiner, who found that her disability status was permanent
11 and stationary based on her hands being at 3 percent ability
12 due to nerve damage stemming from the cervical spine. Dr.
13 Thokran, who performed a nerve conduction study, said they
14 wanted to do surgery on her hands, but Plaintiff said she did
15 not want surgery because "it's going to defeat the purpose
16 and my hands are still going to be messed up."). Her back
17 issues (cervical spine and lumbar spine) limit her abilities
18 to stand and walk (she can stand/walk for approximately 20 to
19 30 minutes). In the past 4 months she has had two incidents
20 in which she had walked too much and her back went out,
21 resulting in her being taken to the hospital in an ambulance.
22 She is not able to lift (more than 20 pounds) or grab things;
23 she has swelling and numbness in her hands (she drops a lot
24 of dishes at home and is in the process of getting in-home
25 care). She wears prescribed wrist splints to support her
26 hands. Her neck and back are swollen, and pain radiates from
27 her neck to her shoulders, down her arms, and into her hands.
28 Her neck pain and back pain are constant. She also is not
able to work because of fibromyalgia (diagnosed in 2007)
which flares up twice a month, causes a throbbing pain in the
back of her neck and head and lower back, and makes her feel
like her whole body is on fire. She also is not able to work
because of migraine headaches (starting in 2004, but
diagnosed in 2007) which occur once a week, last an entire
day, cause nausea and vomiting, and cause her to stay out of
the light. (See AR 72-88).

She takes pain medication (Tramadol, Gabapentin) and
Lidocaine patches for her back. The pain medication helps a
little bit, so that she experiences back pain at a level of
7 out of 10. She used to take two medications (including
Tramadol) for her fibromyalgia, but she stopped taking one of
them because of depression side effects. She used to take
two medications (Tramadol and a dissolving medication) for
her migraine headaches, but she stopped taking the dissolving
medication. (See AR 73-74, 82-84).

Although she has a driver's license, she cannot grab the
steering wheel because of nerve damage in her hands. She had
to drive to the hearing because she had no other option; she
drove slowly and carefully and had to place her wrist in an
uncomfortable position. During the day, when not sitting,

1 she lies on her side for about an hour or so and then stands
2 up for about a minute to stretch. (See AR 57-58, 88-90).

3
4 3. The ALJ's Credibility Findings

5
6 After summarizing Plaintiff's testimony (see AR 32)⁶, the ALJ made
7 the following findings:

8
9 After careful consideration of the evidence, the undersigned
10 finds that the claimant's medically determinable impairments
11 could reasonably be expected to produce the above-alleged
12 symptoms; however, the claimant's statements concerning the
13 intensity, persistence and limiting effects of these symptoms
14 are not entirely consistent with the medical evidence and
15 other evidence in the record for the reasons explained in
16 this decision. Accordingly, these statements have been found
17 to affect the claimant's ability to work only to the extent
18

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20 _____
⁶ The ALJ wrote:

21 The undersigned considered all of the claimant's subjective
22 complaints, including statements from the administrative
23 hearing and disability reports (Exhibits 2D, 4E, 5E, 7E, and
24 Testimony). The claimant's statements in the written
25 submissions mirror the subjective complaints from the
26 claimant's testimony. The claimant alleged that carpal tunnel
27 syndrome, degenerative disc disease, and infraspinatus
28 tendinosis of the right shoulder limited her ability to work.
Specifically, the claimant asserted that the impairments
caused symptoms such as muscle pain in the hand and back, back
spasms with radiation to buttocks, back swelling, neck pain,
and hand pain. The claimant further noted that difficulty
with sitting, standing, walking, grasping, gripping, holding,
and typing limited the claimant's ability to work. The
claimant asserted she was unable to work due to her alleged
impairments. (AR 32-33).

1 they can reasonably be accepted as consistent with the
2 objecctive medical and other evidence.
3

4 The undersigned finds the claimant's allegations concerning
5 the intensity, persistence, and limiting effects of her
6 symptoms are less than fully persuasive based on the
7 claimant's treatment history. Although the claimant has
8 received treatment for the allegedly disabling impairments,
9 that treatment has been essentially routine and conservative
10 in nature. The lack of aggressive treatment or surgical
11 intervention is inconsistent with the claimant's alleged
12 disabling impairments.
13

14 More, importantly, the persuasiveness of the claimant's
15 allegations regarding the severity of her symptoms and
16 limitations is diminished because those allegations are
17 greater than expected in light of the objective evidence or
18 record, discussed below. The undersigned has reviewed and
19 considered the complete medical history consistent with 20
20 CFR 404.1512(d) and 416.912(d), including evidence from the
21 period prior to the claimant's alleged onset date (Exhibits
22 1F - 20F). The treatment records reveal the claimant
23 received routine, conservative, and non-emergency treatment
24 since the alleged onset date. The positive objective
25 clinical and diagnostic findings since the alleged onset date
26 detailed below do not support more restrictive functional
27 limitations than those assessed herein.
28

(AR 33).

1 4. The ALJ Failed to Provide Specific, Clear and Convincing
2 Reasons for Rejecting Plaintiff's Subjective Symptom Testimony
3

4 As set forth below, the ALJ failed to provide legally sufficient
5 reasons for discrediting Plaintiff's testimony about the intensity,
6 persistence and limiting effects of her pain and symptoms.⁷
7

8 First, the ALJ failed to "specifically identify 'what testimony is
9 not credible and what evidence undermines [Plaintiff's] complaints.'" Parra v. Astrue, 481 F.3d 742, 750 (9th Cir. 2007) (quoting Lester v.
10 Chater, 81 F.3d 821, 834 (9th Cir. 1995)); see also Smolen, 80 F.3d at
11 1284 ("The ALJ must state specifically what symptom testimony is not
12 credible and what facts in the record lead to that conclusion").
13
14

15 Second, the ALJ did not properly discredit Plaintiff's testimony
16 based on the determination that Plaintiff had obtained only routine and
17 conservative treatment for her impairments (spondylitis of the
18 cervicothoracic spine, degenerative disc disease of the spine, carpal
19 tunnel syndrome, and infraspinatus tendinosis of the right shoulder).
20 See Childress v. Colvin, 2014 WL 4629593, *12 (N.D. Cal. Sept. 16,
21 2014)("There is no guiding authority on what exactly constitutes
22 'conservative' or 'routine' treatment."); Boitnott v. Colvin, 2016 WL
23

24 ⁷ The Court will not consider reasons for discounting
25 Plaintiff's subjective symptom testimony that were not given by the ALJ
26 in the decision (see Joint Stip. at 24-25). See Connett v. Barnhart,
27 340 F.3d 871, 874 (9th Cir. 2003)("We are constrained to review the
28 reasons the ALJ asserts."; citing SEC v. Chenery Corp., 332 U.S. 194,
196 (1947) and Pinto v. Massanari, 249 F.3d 840, 847-48 (9th Cir.
2001)); Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)("We
review only the reasons provided by the ALJ in the disability
determination and may not affirm the ALJ on a ground upon which he did
not rely.").

1 362348, *4 (S.D. Cal. January 29, 2016)(explaining that "[t]here was no
2 medical testimony at the hearing or documentation in the medical record
3 that the prescribed medication constituted 'conservative' treatment of
4 [the plaintiff's] conditions," and that the ALJ "was not qualified to
5 draw his own inference regarding whether more aggressive courses of
6 treatments were available for Plaintiff's conditions"). At the hearing,
7 the ALJ did not ask Plaintiff why the treatments for her impairments
8 were conservative, or why she had not obtained other kinds of treatments
9 for her impairments. Moreover, the ALJ did not address Plaintiff's
10 testimony that (1) the prescribed medications for her back pain did not
11 substantially reduce her pain, and (2) Dr. Thokran recommended surgery
12 on Plaintiff's hands which Plaintiff declined. Moreover, although
13 Plaintiff did not have surgery on her neck, as the ALJ noted (see AR 7),
14 the record reflects that on November 8, 2016, Plaintiff did inquire into
15 having neck surgery. (See AR 525). Finally, it is not clear that the
16 treatments for Plaintiff's impairments were conservative, and the record
17 does not reflect the appropriateness or availability of more aggressive
18 treatment options. For her degenerative disc disease and cervical
19 spondylosis, Plaintiff was prescribed Naproxen and Tramadol, and
20 received epidurals in her cervical spine (see AR 500, 527, 542); and for
21 her carpal tunnel syndrome, Plaintiff was prescribed Naproxen and
22 Tramadol, and was referred to a hand surgeon for consultation (see AR
23 486, 491, 551, 610). See Lapeirre-Gutt v. Astrue, 382 Fed.Appx 662, 664
24 (9th Cir. 2010)(treatment consisting of copious amounts of narcotics,
25 occipital nerve blocks, and trigger point injections not conservative).
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1 Third, while the ALJ also found that there was a lack of objective
2 medical evidence supporting Plaintiff's testimony concerning her
3 symptoms and limitations, this factor cannot, by itself, support an
4 adverse finding about Plaintiff's testimony. See Trevizo v. Berryhill,
5 862 F.3d 987, 1001 (9th Cir. 2017)(once a claimant demonstrates medical
6 evidence of an underlying impairment, "an ALJ 'may not disregard [a
7 claimant's testimony] solely because it is not substantiated
8 affirmatively by objective medical evidence.'" ; quoting Robbins v. Soc.
9 Sec. Admin., 466 F.3d 880, 883 (9th Cir. 2006)); Rollins v. Massanari,
10 261 F.3d 853, 857 (9th Cir. 2001); Tidwell v. Apfel, 161 F.3d 599, 602
11 (9th Cir. 1998); see also SSR 16-3p, 2017 WL 5180304, *7 ("We must
12 consider whether an individual's statements about the intensity,
13 persistence, and limiting effects of his or her symptoms are consistent
14 with the medical signs and laboratory findings of record.... However,
15 we will not disregard an individual's statements about the intensity,
16 persistence, and limiting effects of symptoms solely because the
17 objective medical evidence does not substantiate the degree of
18 impairment related-symptoms alleged by the individual.").
19

20 Because the Court finds that the the ALJ did not discount
21 Plaintiff's symptom testimony on legally permissible grounds, the Court
22 is unable to defer to the ALJ's credibility determination. Cf. Flaten
23 v. Sec'y of Health & Human Servs., 44 F.3d 1453, 1464 (9th Cir.
24 1995)(the court will defer to the ALJ's credibility determinations when
25 they are appropriately supported in the record by specific findings
26 justifying that decision)(citations omitted).
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1 **B. Remand Is Warranted**

2
3 The decision whether to remand for further proceedings or order an
4 immediate award of benefits is within the district court's discretion.
5 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
6 useful purpose would be served by further administrative proceedings,
7 or where the record has been fully developed, it is appropriate to
8 exercise this discretion to direct an immediate award of benefits. Id.
9 at 1179 ("[T]he decision of whether to remand for further proceedings
10 turns upon the likely utility of such proceedings."). However, where,
11 as here, the circumstances of the case suggest that further
12 administrative review could remedy the Commissioner's errors, remand is
13 appropriate. McLeod v. Astrue, 640 F.3d 881, 888 (9th Cir. 2011);
14 Harman v. Apfel, 211 F.3d at 1179-81.
15

16 Since the ALJ failed to properly assess Plaintiff's symptom
17 testimony, remand is appropriate. Because outstanding issues must be
18 resolved before a determination of disability can be made, and "when the
19 record as a whole creates serious doubt as to whether the [Plaintiff]
20 is, in fact, disabled within the meaning of the Social Security Act,"
21 further administrative proceedings would serve a useful purpose and
22 remedy defects. Burrell v. Colvin, 775 F.3d 1133, 1141 (9th Cir.
23 2014)(citations omitted).⁸
24

25 ⁸ The Court has not reached any other issue raised by Plaintiff
26 except to determine that reversal with a directive for the immediate
27 payment of benefits would not be appropriate at this time.
28 "[E]valuation of the record as a whole creates serious doubt that
Plaintiff is in fact disabled." See Garrison v. Colvin, 759 F.3d 995,
1021 (2014). Accordingly, the Court declines to rule on Plaintiff's
claim regarding the ALJ's error in failing to properly consider the
relevant medical evidence, including opinion evidence, in assessing
(continued...)

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ORDER

For the foregoing reasons, the decision of the Commissioner is reversed, and the matter is remanded for further proceedings pursuant to Sentence 4 of 42 U.S.C. § 405(g).

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: February 27, 2019

/s/
ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE

⁸ (...continued)
Plaintiff's RFC (see Joint Stip. at 4-10). Because this matter is being remanded for further consideration, this issue should also be considered on remand.